

1 TREVA J. HEARNE, ESQ. (SBN 4450)
2 JAMES SPOO, ESQ. (SBN 1018)
3 **ZEH, SAINT-AUBIN, SPOO, & HEARNE**
4 575 Forest Street, Suite 200
5 Reno, Nevada 89509
6 Telephone: (775) 323-5700

7
8 Attorneys for Intervenor,
9 MINERAL COUNTY NEVADA

FILED

01 OCT -5 PM 3:42

LANCE S. WILSON
CLERK
DEPUTY

10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 * * *

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 WALKER RIVER PAIUTE TRIBE,

16 Plaintiff-Intervenor,

17 vs.

18 WALKER RIVER IRRIGATION DISTRICT,
19 a corporation, et al.;

20 Defendants.

21
22 MINERAL COUNTY,

23 Proposed-Plaintiff-Intervenor,

24 vs.

25 WALKER RIVER IRRIGATION DISTRICT,
26 a corporation, et al.

27
28 Proposed Defendants.

In Equity No. C-125-ECR
Subfile No. C-125-C

RESPONSE TO REQUEST #387
FOR STATUS CONFERENCE

ZEH, SAINT-AUBIN, SPOO & HEARNE
575 Forest Street, Suite 200
Reno, Nevada 89509
(775) 323-5700 FAX: (775) 786-8183

1 COMES NOW, Mineral County, Nevada, responds to the Walker River Irrigation
2 District's Request for Status Conference. Mineral County, Nevada, has no objection to a
3 status conference regarding its service of process on parties in this proceeding, but Mineral
4 County states arguments regarding the incongruity of the basis for WRID's request for status
5 conference as follows:
6

7
8 RESPONSE

9 Mineral County, Nevada, has indeed been in the active process of service of its papers
10 in this matter since 1995. The Court has directed Mineral County to shoulder an incredibly
11 burdensome and costly task in order for it to make its case to this Court of equity regarding
12 the impending death of the natural wonder that is Walker Lake.
13

14 Mineral County, Nevada, whose annual expenditures for the year ending June 30,
15 2000 were \$4,755, 727.00 has spent more than \$100,000.00 in making this service of
16 process. Over one hundred volunteers have donated their time in addition to the sums
17 expended to employ process servers, marshals, and sheriffs over the entire United States of
18 America, in order to make service on holders of water rights in the Walker River. Nearly
19 2000 persons have been personally served. The Court has held numerous hearings, one that
20 lasted an entire day. This type of personal service for a water adjudication is both unheard
21 of and considerable in its breadth. In the State of New Mexico, for example, the federal
22 district court determined that the water rights holders could be added as their identity became
23 known until the New Mexico Court had approved a plan to survey the water course. See,
24 *U.S. v. Bluewater-Toltec Irrigation District*, 580 F.Supp. 1434, 1438 (D.New Mexico 1984).
25
26 order to determine if a water right is being challenged. See, The holders of water rights
27
28

1 in the Walker River have been given notice far and above any other State's requirement and
2 far and above the requirement of this State if the challenge were being handled by the State
3 Engineer. See, NRS, 533.095.
4

5 The hostility to the service of process grew by degree as Walker River Irrigation
6 District continued to complain about aspects of the service and Mineral County was required
7 to serve persons multiple times. Guard dogs were let lose on the process servers, one process
8 server was intentionally trapped in a driveway and had to call for police assistance and, in
9 Los Angeles, a process server had to run several blocks in order to make personal service on
10 a party by chase. Mineral County has serious concerns over continued service of process in
11 this hostile environment precipitated by the newsletters of Walker River Irrigation District
12 and Walker River Users Group in 1995 which made allegations of water theft by Mineral
13 County. (See, Brief of Mineral County, Affidavit of Louis Thompson, August 1995)
14
15

16 Now, those same persons will again be served by the United States of America since
17 it is now, after over seven years, only making preparation to begin its service of process on
18 those same people. Certainly, Mineral County can make its service papers available to the
19 United States and the Tribe and any person not served with the pleadings of Mineral County
20 could also be served with Mineral County pleadings simultaneously to avoid any further
21 harassment of the Walker River water rights holders. This was the original plan for Mineral
22 County until the United States took so very long to begin its service of process.
23
24

25 As Mineral County has briefed on numerous occasions, the pleadings are adequate
26 to give notice to the parties of the action contemplated no matter the complaints of WRID
27 regarding paper. As Mineral County has briefed previously, even if the documents are
28

1 slightly defective, if adequate notice is given that an action has been filed, then service is
2 complete. Mineral County had to rely upon marshals, process servers and sheriffs and
3 documents were forwarded but not always served. As Mineral County has briefed on this
4 issue before, the courts have generally held that the pleadings served must give sufficient
5 notice.
6

7
8 It has long been settled that statutory provisions shall be liberally construed to
9 promote their objective. . . . It is accepted that mere irregularities in the form
10 of process do not render it void where such defective process is sufficient to
11 advise the defendant of the nature of the case, the court in which it is filed, and
12 his interest therein. . . .

13
14 *Nikwei v. Ross School of Aviation, Inc.*, 822 F.2d 939, 944 (10th Cir. 1987)

15 and the same issue was decided by the 9th Circuit and remains good law since the brief was
16 filed in 1996.

17 Our interpretation of Rule 4(c)(2)(C)(ii) fulfills the goals of Rule 4, which was
18 designed to provide maximum freedom and flexibility in the procedures for
19 giving all defendants. . . . notice of commencement of the action and to
20 eliminate unnecessary technicality in connection with service of process. 4 C.
21 Wright and A. Miller, Federal Practice and Procedure, Section 1061, at 216
22 (2d ed. 1987).

23
24 *Electrical Specialty Company v. Road and Ranch Supply, Inc.*, 967 F.2d 309, 314 (9th
25 Cir. 1992).

26 Mineral County has always believed that when a briefing schedule is determined, that
27 the parties ought to be informed by means of letter, publication or both. Moreover, there is
28 no reason for Mineral County's intervention to wait for the final service of process on the
final party to this action. If the Court desires Mineral County to continue to serve those
persons who acquire water rights, Mineral County agrees to do that. There may be still


1 approximately 20 persons that need service.(See, Motion to Join and Dismiss Certain Parties
2 of Mineral County and Responses of Walker River Irrigation District and Watermaster.)
3
4 Over 1500 have been served and will adequately represent the issues in this case. The
5 merits of Mineral County's intervention should be set for hearing on the merits and the
6 parties will continue to be served until the waters are surveyed just as approved in the New
7 Mexico case cited herein above.

8
9 As stated by the Court itself, Mineral County has made a heroic effort in completing
10 service and complying with the Court's directives. Mineral County's request for intervention
11 should be set for briefing and hearing immediately. Mineral County has served well over
12 2000 parties and will agree to continue to serve parties as they are identified by the Court
13 through the process with the United States of America.

14
15 WHEREFORE, Mineral County, Nevada, respectfully agrees to a status conference
16 1) for the purpose of ascertaining how service will continue, if necessary and 2) for the
17 purpose of setting the briefing schedule and hearing on the merits of the Motion to Intervene
18 by Mineral County and its preliminary injunction.

19
20 Dated this 5th day of October, 2001.

21 ZEH, SAINT-AUBIN, SPOO & HEARNE

22
23
24 By: 
25 TREVA J. HEARNE, ESQ.
26
27
28

PROOF OF SERVICE BY MAIL

Pursuant to NRCP 5(b), I certify that I am an employee of ZEH, SAINT-AUBIN, SPOO & HEARNE, 575 Forest Street, Suite 200, Reno, Nevada; over the age of eighteen years and not a party to the within action; that on this date, I deposited for mailing in the United States Mail, at Reno, Nevada, postage thereon fully prepaid, a true and correct copy of the *Response to Request for Status Conference*, addressed as follows:

Marta Adams
Deputy Attorney General
State of Nevada
100 North Carson Street
Carson City, NV 89701

Western Nevada Agency
Bureau of Indian Affairs
1677 Hot Springs Road
Carson City, NV 89706

George Benesch
P.O. Box 3498
Reno, NV 89505

Linda A. Bowman
540 Hammill Lane
Reno, NV 89511

Ross E. deLipkau
P.O. Box 2790
Reno, NV 89505

Gordon H. DePaoli
Dale E. Ferguson
Woodburn & Wedge
6100 Neil Road, Suite 500
Reno, NV 89511-1149

Mary Hackenbracht
Deputy Attorney General
State of California
1515 Clay Street, 20th Floor
Oakland, CA 94612-1413

Susan L. Schneider
U.S. Department of Justice
Indian Resources Section
Environment & Natural
Resources Division
999 18th Street, Suite 945
Denver, CO 80202

Scott McElroy
Alice Walker
Greene, Meyer & McElroy
1007 Pearl Street
Boulder, CO 80302

Kenneth Spooner
General Manager
WRID
P.O. Box 820
Yerington, NV 89447

1 Matthew R. Campbell, Esq.
2 David Moser, Esq.
3 McCutchen, Doyle, Brown & Enerson
4 Three Embarcadero Center
5 San Francisco, CA 94111

Shirley A. Smith
Assistant U.S. Attorney
100 West Liberty, Suite 600
Reno, NV 89509

6 R. Michael Turnipseed, P.E.
7 Division of Water Resources
8 State of Nevada
9 123 Nye Lane
10 Carson City, NV 89710

Michael W. Neville
Deputy Attorney General
Department of Justice
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, California 94102-3664

11 Richard R. Greenfield
12 Department of the Interior
13 Two North Central Avenue, #500
14 Phoenix, AZ 85004

15 Gary Stone
16 290 S. Arlington Avenue
17 Reno, NV 89510


18 James Shaw
19 U.S. Board of Commissioners
20 Watermaster
21 P.O. Box 853
22 Yerington, NV 89447

23 John Kramer
24 Department of Water Resources
25 1416 Ninth Street
26 Sacramento, CA 95814

27 Kelly Chase
28 P.O. Box 2800
Minden, NV 89423

Hank Meshorer
U.S. Department of Justice
Natural Resources Division
Ben Franklin Station
P.O. Box 7397
Washington, D.C. 20044

Dated this 5th of October, 2001.


Martha Hauser